THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1456 of 2005 (M/S)

1. Mam Chand S/o Shri Sumer Chand,
2. Vijendra S/O Shri Ranjeet,
3. Bhagat Singh S/o Shri Man Chand,
4. Jitu S/o Shir Mam Chand,
   All R/o Mohalla Srinath Nagar Jwalapur,
   District Haridwar.

……Petitioner.

Versus

1. Civil Judge (Junior Division)
   Haridwar.
2. Smt Suhawanti W/o Shri Tejbhan,
   R/O Mohalla Srinath Nagar Jwalapur,
   Tehsil and District Haridwar, through its
   Power and Attorney Holder Tejbhan, S/o Late Hutoo Ram
   R/O Mohalla Srinath Nagar Jwalapur, Tehsil and
   District Haridwar.

… Respondents

Sri Lokpal Singh holding brief of Rajeev Pathak, learned counsel for the petitioner.
Sri Nand Prasad, Learned Standing Counsel for the respondent no. 1.
Sri Dharmendra Barthwal, learned counsel for the respondent no. 2.

Dated March 22, 2006

Hon'ble B.S. Verma, J.

Heard learned counsel.

The petitioner has filed the present writ petition quashing the impugned order dated 20-09-2004 contained as Annexure No. 5 passed by the Ist Additional Civil Judge (Jr. Div.) Haridwar, in Original, Suit No. 207 of 1999, Suhagwanti Vs. Mam Chand. By the impugned order, the respondent no. 1 allowed the amendment application of the plaintiff-respondent no. 2 paper no. 109-C2.

The only ground of challenged before the Court as contended by the learned counsel for the petitioner is that the mode of valuation of the suit made in paragraph no. 11 of the plaint is not

permissible in the eye of law. It is also contended that by the proposed amendment a relief for mandatory injunction is sought by the plaintiff and in the grab of mandatory injunction, the plaintiff wants to get the possession over the property in dispute form the defendants. Hence the learned Trial Court erred in law in allowing the amendment application of the plaintiff-respondent no. 2.

Initially the suit for permanent injunction was filed by the respondent no. 2 against the petitioner. It was stated in the amendment application that during the pendency of the suit, the defendant-petitioners have entered into possession unauthorisedly in the absence of the plaintiff on 12.3.2004. Hence the application for amendment was moved on the said ground.

The application for proposed amendment was moved on the said ground and for the relief consequential amendment was also sought. The trial court allowed the amendment on the ground that the fact whether the defendants have unauthorisedly entered in possession over the disputed property, the same can be proved only at the stage of evidence. If the valuation of the suit is being affected, that can only be given effect only after incorporation of the amendment and the rights of the defendant to challenge the valuation of the suit is not being prejudiced in any manner at this stage.

The contention of the learned counsel for the petitioner is misconceived. The impugned order passed by the learned I Additional Civil Judge (Jr. Div.) Haridwar does not suffer from any illegality or perversity. The writ petition is devoid of merit.

The writ petition is dismissed. No order as to costs.

(B.S. Verma, J.)

RCP